

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1138 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 35-47-1-2.6 IS ADDED TO THE INDIANA
- 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2001]: **Sec. 2.6. "Assault weapon" means a**
- 6 **firearm that shoots automatically more than one (1) shot without**
- 7 **manual reloading by a single function of the trigger.**
- 8 SECTION 2. IC 35-47-2-7 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) Except an
- 10 individual acting within a parent-minor child or guardian-minor
- 11 protected person relationship or any other individual who is also acting
- 12 in compliance with IC 35-47-10, a person may not sell, give, or in any
- 13 other manner transfer the ownership or possession of a handgun or
- 14 assault weapon ~~(as defined in IC 35-50-2-11)~~ to any person under
- 15 eighteen (18) years of age.
- 16 (b) It is unlawful for a person to sell, give, or in any manner
- 17 transfer the ownership or possession of a handgun to another person
- 18 who the person has reasonable cause to believe:
- 19 (1) has been:
- 20 (A) convicted of a felony; or
- 21 (B) adjudicated a delinquent child for an act that would be
- 22 a felony if committed by an adult, if the person seeking to
- 23 obtain ownership or possession of the handgun is less than
- 24 twenty-three (23) years of age;
- 25 (2) is a drug abuser;
- 26 (3) is an alcohol abuser; or
- 27 (4) is mentally incompetent."

Page 2, after line 18 , begin a new paragraph and insert:

"SECTION 3. IC 35-50-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this section, "crime of violence" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) involuntary manslaughter (IC 35-42-1-4);
- (4) reckless homicide (IC 35-42-1-5);
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) rape (IC 35-42-4-1);
- (8) criminal deviate conduct (IC 35-42-4-2);
- (9) child molesting (IC 35-42-4-3);
- (10) robbery as a Class A felony or a Class B felony (IC 35-42-5-1);
- (11) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or
- (12) causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the aggravating and mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c) in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8, ~~and~~ IC 35-50-2-10, **IC 35-50-2-11, and IC 35-50-2-13** to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

- (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or
- (2) while the person is released:
 - (A) upon the person's own recognizance; or
 - (B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If a court determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 4. IC 35-50-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

(b) As used in this section, "offense" means **an offense that is eligible to be sentenced as**

(1) a felony, ~~under IC 35-42 that resulted in death or serious bodily injury;~~

(2) ~~kidnapping;~~ or

(3) ~~criminal confinement as a Class B felony.~~

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

(d) If after a sentencing hearing a court finds that a person who committed an offense used a firearm in the commission of the offense the court may sentence the person to an additional fixed term of imprisonment of five (5) years.

(e) A person is assigned to Class III under IC 35-50-6 during the time that the person is serving a fixed term of imprisonment imposed under this section. Credit time earned under IC 35-50-6-3.3 does not apply to a term of imprisonment imposed under this section. The term of imprisonment imposed under this section is in addition to any other sentence imposed because the person used, drew, possessed, or threatened to use a firearm, another deadly weapon, or other deadly force in the commission of an offense.

SECTION 5. IC 35-50-6-4, AS AMENDED BY P.L.90-2000, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) **Except as provided in IC 35-50-2-11**, a person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.

(b) A person may be reassigned to Class II or Class III if he violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which he is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, he must be granted a hearing to determine his guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive his right to the hearing.

(c) In connection with the hearing granted under subsection (b), the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

- (3) have an impartial decisionmaker;
- (4) appear and speak in his own behalf;
- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if his testimony or any evidence derived from his testimony is used in any criminal proceedings; and
- (10) have his record expunged of any reference to the charge if he is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(d) A person may be reassigned from Class III to Class I or Class II or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if he should be reassigned to a higher credit time class.

SECTION 6. [EFFECTIVE JULY 1, 2001] IC 35-50-1-2 and IC 35-50-2-11, both as amended by this act, apply only to offenses committed after June 30, 2001. IC 35-50-1-2 and IC 35-50-2-11, as effective before the amendment by this act, apply to offenses committed before July 1, 2001. The amendment of IC 35-50-1-2 and IC 35-50-2-11 by this act shall not be construed to reduce the sentence of any offender sentenced under IC 35-50-2-11, as effective before the amendment by this act, or IC 35-50-2-13, or both."

Renumber all SECTIONS consecutively.

(Reference is to HB 1138 as printed February 22, 2001.)

Representative THOMPSON